

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA)	
)	
v.)	1:20cr00040
)	Electronic Filing
TYVARH NICHOLSON)	

MEMORANDUM ORDER

AND NOW, this 8th day of December, 2021, upon due consideration of defendant's objections to the Presentence Investigation Report and request for a criminal history departure under the United States Sentencing Guidelines, and the government's response thereto as reflected in its Sentencing Memorandum, IT IS ORDERED that [59] defendant's objections be, and the same hereby are, overruled. This ruling is without prejudice to defendant advancing the import of his objections in support of a variance at the time of sentencing.

While defendant raises arguments that are deserving of careful consideration in the arriving at an adequate and just sentence and the information underlying the convictions reported at paragraphs 29 and 33 does raise a question as to whether the full force of the raw criminal history calculations should be straightforwardly applied (particularly since a 1 point reduction would place defendant in criminal history category IV and result in a reduced guidelines range of 51 to 71 months), the standard for ratcheting down defendant's criminal history category requires a showing that reliable information indicates that defendant's criminal history category "*substantially* over-represents the seriousness of defendant's criminal history or the likelihood that he will commit other crimes." U.S.S.G. § 4A1.3(b)(1) (emphasis added). Defendant's challenges fall short of this mark. Consequently, they will not be considered pursuant to the formal mechanisms for departure under the guidelines and will be reserved for consideration in

support of any argument defendant advances for a variance pursuant to the § 3553(a) factors that guide the court's sentencing discretion.

s/David Stewart Cercone

David Stewart Cercone

Senior United States District Judge

cc: Christian A. Trabold, AUSA
Neal E. Rothschild, Esquire

(Via CM/ECF Electronic Mail)